

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.10 OF 2000

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

VIJAYKUMAR MURLIDHAR BOCHIWALA
VERSUS
NITINBHAI MANHARLAL MEHTA & ANR.

Appearance:

MR SM SHAH for petitioner
MR DF AMIN for respondents

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 27/04/2000

C.A.V. JUDGMENT

#. Rule. Mr.Amin waives service of Rule on behalf of respondents.

#. This revision application is filed under Section 115 of the Civil Procedure Code, 1908, by the plaintiff challenging therein, the orders passed by the appellate Bench of the Small Causes Court, Ahmedabad, in Appeal From Order No.76 of 1999 dated 14.10.99 confirming thereunder the order passed by the Small Causes Court, Ahmedabad, below ex.5 in H.R.P. Suit No.224 of 1999 dated 22nd June 1999.

#. The learned trial court granted temporary injunction in favour of plaintiff restraining thereunder the respondents from taking forcefully the possession of cellar, ground floor and first floor. So far the prayer made for temporary injunction in respect of second floor and third floor of the property is concerned, the injunction was not granted. This order has been confirmed by the appellate court and hence this revision application.

#. The learned counsel for the petitioner contended that once both the courts have found as a fact that the plaintiff is in possession of the second and third floor of the disputed property, during the pendency of the suit, this position should have been maintained. It has next been contended that the plaintiff-petitioner has come up with a case that whole of the property was let out to the plaintiff by respondents-landlords and even if the defendants-landlords are not accepting the tenancy rights of the plaintiff in the second and third floor, when the possession was found of these two floors with the plaintiff, the same should have been protected. Lastly, it is contended that even in a case of rank trespasser, the landlords cannot be permitted to dispossess the trespasser from the disputed property by force. In support of this contention, Mr.Shah placed reliance on the following decisions:

* Ramshree Mahavir v. Girdharilal Bholanath
Agarwal - 1970 GLR 971

* B.N. Trivedi & Ors. v. Govt. of Gujarat &
Ors. - 1994 GLT 395

* N.Umapathy v. B.V.Muniyappa - AIR 1997 SC 2467

* Prataprai N. Kothari v. John Braganza - AIR
1999 SC 1666

#. Mr.D.F.Amin, learned counsel for defendants-respondents in contra, contended that both the

courts have concurrently held that the plaintiff is not the tenant in the portion of the suit property, i.e. second and third floor and his possession was found to be illegal, i.e. as trespasser and rightly, no injunction has been granted. It has next been contended that trespassers have no right to obtain injunction or to protect their possession. The decisions on which reliance is placed by learned counsel for petitioner have been overruled by the of Hon'ble Supreme Court. In support of his contention, he placed reliance on the following decisions of this court as well as of Hon'ble Supreme Court:

- * Rukhiben w/o. Amarsingh Chaturbhai Parmar v. Kiritkumar Kantilal Patel - 1997(3) SCC 2383
- * Premji Ratansey Shah & ors. v. Union of India & Ors. - (1994)5 SCC 547
- * Anupam Rekdi Cabin Association v. Jamnagar Municipal Corporation - 1995(1) GLH 586
- * Tamil Nadu Housing Board v. A. Viswam - (1996)8 SCC 259
- * Sukhlal Ramchand & anr. v. Lalji Ranchhod - 8 GLT 48
- * K.V.Narayan v. S.Sharna Gowda & anr. - AIR 1986 Karnataka 77
- * State of Jammu & Kashmir & anr. Ghulam Rasool & anr. - AIR 1979 J & K 53.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. Both the courts have concurrently recorded a finding of fact that the second and third floor were not let out to the plaintiff-petitioner. Cellar, ground floor and first floor were held to be the tenanted premises. Both the courts have further concurrently held that the plaintiff-petitioner has failed to prove, viz. legal possession on the second and third floor of the suit premises. After recording these concurrent findings of facts, the learned trial court as well as the first appellate court have restrained the defendants-respondents from dispossessing forcefully the plaintiff-petitioner from the tenanted premises, namely cellar, ground floor and first floor, but injunction as prayed for, for second and third floor came to be

declined. These concurrent findings of facts recorded by both the courts are not perverse. The learned counsel for the petitioner has failed to make out any case for interference of this court with these findings of facts. In the absence of any tenancy rights, naturally, the possession of the plaintiff-petitioner on the second and third floor is not lawful.

#. The contention of the learned counsel for the petitioner is that even if it is taken that possession of these two floors of the disputed property of the petitioner is not lawful, still the defendant-respondents have no right to dispossess forcefully, the plaintiff-petitioner therefrom without due process of law.

#. In the case of Ramshree Mahavir v. Girdharilal Bholanath Agarwal (supra) Hon'ble Mr. Justice M.P. Thakkar, as he then was, held:

"In a civilization where the rule of law obtains, it is difficult to envisage a Court of law upholding any such right in favour of a person who claims right to dispossess by use of force without recourse to due process of law. If this were to be permitted, there would be a violent conflict between persons claiming individual rights. There is no manner of doubt that no such right can be claimed by the defendant regardless of the question whether or not the plaintiff himself has any right to remain in possession. Once it is established by the plaintiff that he is in exclusive possession and it is admitted by the defendant that he is in such possession, an injunction restraining the defendant from dispossessing the plaintiff by force must issue as a matter of course, more readily, if the defendant persists in asserting the claim that he has a right to take the law in his own hands and forcibly dispossess, the plaintiff.

##. In the case of B.N. Trivedi & Ors. v. Govt. of Gujarat & Ors. (supra), the Division Bench of this Court, speaking through Hon'ble Mr. Justice A.P. Ravani, as he then was, observed:

"The petitioners have put up cabins on the plots allotted to them by respondent No.3, that is, Wadhwan Municipality. The plots are situated near the compound wall of Mahatma Gandhi Hospital, Opp. S.T. Bus Stand in Wadhwan City.

The petitioners apprehend that they will be evicted from the plots occupied by them otherwise than in accordance with law. Hence the petition, praying that the respondents be restrained from removing the petitioners' cabins and evicting them from the land in question. The petitioners also pray that the provisions of Sec.185(2) of the Gujarat Municipalities Act, 1963, be declared illegal as being ultra vires the provisions of Art.14 and 21 of the Constitution of India.

It may be noted that the learned counsel for the petitioners has referred to the following decisions of the Hon'ble Supreme Court and other High Courts in support of the contention that even a trespasser cannot be evicted without following the due process of law:

- (1) Yashwant Singh v. Jagdish Singh, AIR 1986 SC 620, (2) K.K.Verma v. Naraindas C. Malkani, AIR 1954 Bom. 358, (3) Yar Mohammad v. Lakshmi Das, AIR 1959 All. pg.1, (4) Krishna Ram Mahale v. Shobha Venkat Rao, AIR 1989 SC 2097.

However, since the learned counsel for the respondents has conceded that the Municipality will not take action without following the procedure indicated in the case of Nehru Marg Cabin Association (supra), which has been approved in L.P.A. No.246 of 1989, decided on October 17, 1989, it is not necessary to refer to the aforesaid decisions in further details. Rule absolute to the aforesaid extent."

##. In the case of N.Umapathy v. B.V.Muniyappa (supra), the apex court observed:

"Leave granted.

2. We have heard counsel for both the parties.

3. This appeal by special leave arises from the judgment of the Karnataka High Court made on 28.8.1996 in C.R.P. No.2780/95. The admitted position is that the predecessor of the respondent had a mining lease in S.No.14 of Venkatapura Village. The High Court has noted as under:

"Admittedly, in the case on hand, the

plaintiff (respondent herein) having purchased the machinery plant installed over the said extent of the suit land from his vendor, had been in continuous actual possession thereof since November, 1989. It is also an undisputed fact that the plaintiff's vendor was in possession and enjoyment of suit property from 1984 till November, 1989 on which date he delivered possession to the plaintiff under the said agreement. Admittedly, the Government is the true owner of the property."

4. In view of the above undisputed factual position, the only question for consideration is: whether the respondent is entitled to ad interim injunction pending suit under Order XXXIX, Rules 1 and 2, Code of Civil Procedure, 1908, though the trial Court had not granted the injunction and the appellate Court reversed it? The High Court on the above facts maintained ad interim injunction, pending the suit.
5. It is also admitted case that the appellant has mining lease in respect of 1 acre 16 gunthas of land in the same survey number in which the respondent has by a lease deed dated November, 29, 1993. The respondent cannot unlawfully be dispossessed from the lands nor his possession and enjoyment interdicted except in accordance with the due process of law.
6. Under these circumstances, though the appellant had a lease, he cannot be given possession by the Government except after fully ejecting the respondent in accordance with law. It would appear that subsequently on a representation made by the respondent, the Government acknowledged the factum of his possession and agreed to ratify his continuance in possession subject to his paying Rs.12 lacs and odd per acre and further amount as contemplated by the Government order.
7. Under these circumstances, the injunction granted by the High Court is in accordance with law and the respondent is entitled to the protection of his lawful possession by way of ad interim injunction.

8. The appeal is accordingly dismissed. No costs."

##. In the case of Prataprai N. Kothari v. John Braganza (supra), the apex court held:

"11. We have already extracted the summary of conclusions arrived at by the learned single Judge of the High Court. That shows that his conclusions were vitiated by his view that the appellant had title and possession followed title. It is quite obvious that the learned single Judge had not taken note of the principle of possessory title or the principle of law that a person who has been in long continuous possession can protect the same by seeking an injunction against any person in the world other than the true owner. It is also well settled that even the owner of the property can get back his possession only by resorting to due process of law."

##. This court, in the case of Rukhiben w/o. Amarsingh Chaturbhai Parmar v. Kiritkumar Kantilal Patel (supra), held that, "the persons who are simply trespassers on the land and the person who have already executed a registered sale deed in favour of the respondent-plaintiff wherein specific averment is contained that the respondent-plaintiff is put into possession of the land in question and that they have no right, title or interest over the land in question thereafter cannot be permitted to state that they were in possession of the hut when the Court Commissioner made the panchnama. In fact, they had no vestige of title over the land in question to entitle them to a relief of injunction". This court further held that in view of the decision of apex court in the case of Premji Ratansey Shah v. Union of India (supra), the decision given in Ramshree Mahavir v. Girdharilal Bholanath Agarwal (supra) is impliedly overruled.

##. This court, in the case of Sukhlal Ramchand & anr v. Lalji Ranchhod held that, "a party seeking injunction on the allegation that the party is in possession of the property and seeks assistance of the court by praying that for an injunction restraining the other party alleged to be disturbing the possessing of the party in possession must show its lawful possession of the property which in turn must be referable to a valid title. The party claiming to be entitled to relief of injunction must not only show that party is in possession

of property but that possession must be referable to a valid title. If the mother is the exclusive owner of the house, no son can claim a right to stay in that house. If there is a house situated in the compound with a door in the compound wall any one who claims a right to pass through the door must show that there is some property inside the compound to which he has a right of access. In the absence of such right there cannot be mere right of passing and repassing through the door in the compound wall".

##. In the case of Premji Ratansey Shah & Ors. v. Union of India & Ors. (supra) the apex court held:

"4. It is seen that in a suit as originally framed, they sought for a declaration that the award made in respect of the land was void, inoperative and does not bind the petitioners. But that relief had been given up. Thereby, the title of the land of the railway shave not been questioned. With the award made under Section 30, the vendors of the petitioners got themselves bound by the above award under Section 12 of the Act. It is also seen that the two awards had become final and possession was delivered to the railways by the Land Acquisition Officer on 24.2.1960. Thus Defendants 3 and 4 had no ghost of right, title or interest in the lands acquired from the original owner Maibai. The said sale is a void sale and the petitioners, therefore, cannot derive any interest under the agreement of sale to resist the possession of the lawful owner nor could the declaration sought for be given. The question, therefore, is whether an injunction can be issued against the true owner. Issuance of an order of injunction is absolutely a discretionary and equitable relief. In a given set of facts, injunction may be given to protect the possession of the owner or person in lawful possession. It is not mandatory that for mere asking such relief should be given. Injunction is a personal right under Section 41(j) of the Specific Relief Act, 1963; the plaintiff must have personal interest in the matter. The interest of right not shown to be in existence, cannot be protected by injunction.

5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in

favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner."

##. In the case of Tamilnadu Housing Board v. (supra), the Hon'ble Supreme Court in para-12 of the Judgment held:

"12. Thus considered, the title of the land in Survey No.140/4 having been vested in the appellant, to whomsoever it belonged earlier, it stood divested from him/them and no one can lay any claim to the said acquired land once over and claim injunction on that basis. The injunction, therefore, cannot be issued against the true owner, namely, the Housing Board in whom the land ultimately stood vested and then stood transferred to the Municipal Corporation. A trespasser cannot claim injunction against the owner nor can the court issue the same."

##. The Division Bench of this Court in the case of Anupam Rekdi Cabin Association v. Jamnagar Municipal Corporation (supra) held that "after the decision in the case of Premji Ratansey Shah, there should not be an iota of doubt in the minds of the Presiding Officers when dealing with applications for injunctions filed by the plaintiffs who are trespassers and want protection against true owners."

##. In the case of State of Jammu & Kashmir & Anr. Ghulam Rasool & anr. (supra) the learned Single Judge of Jammu & Kashmir High Court held that a trespasser is not entitled to injunction against the owner of property nor the owner is required to resort to legal proceedings to establish his right of ownership over the property in dispute. The relevant portion of the judgment as contained in paragraphs 5 and 6 reads as under:

"5. That relief of injunction is a discretionary relief is now well settled. A party before it can ask a court to exercise discretion in its favour must show that it has some equities in its favour which would imply a court to exercise discretion in its favour. In

the alternative the party seeking injunction must possess some right which the opposite party is trying to invade or there must exist an obligation in its favour whether contractual or otherwise in respect of which the opposite party is trying to commit a breach. These principles clearly emerge out of S.54 of the Specific Relief Act which ordains in what circumstances a court may grant the discretionary relief of perpetual injunction.

6. The findings of the two courts below themselves show that six kanals of land out of Khasra No.192 belongs to the State and the respondents have taken possession of it without any right or title. It would be therefore manifest that the respondents have taken possession and are in possession of this land as rank trespassers. A trespasser has no equities in his favour nor is the owner of the property trespassed under any legal obligation. There being no question of any contractual obligation under such circumstances to submit to the acts of trespass committed by the wrong doer. An owner has therefore every right to enter upon his property and restrain the trespasser from perpetuating his illegal occupation of the property. It is not necessary for him to take recourse to legal proceedings in order to vindicate his rights of ownership and possession in respect of his property which has been taken into possessio by another without any right or title. The position may be of course different where the trespasser has acquired ownership rights in the property by virtue of his long possession. That Government is not bound to honour the possession of a person over its property acquired by the latter without any right or title till it has taken recourse to eject him through legal proceedings is further borne out from section 9 of the Specific Relief Act which makes an exception for a suit under the said section against the Government. I am fortified in taking this view from a judgment of this court in Beant Singh v. Cantonment Executive Officer, Jammu AIR 1960 J & K 83 where later K.V.Gopalakrishnan Nair, J. observed as under (at p.87):

"The learned counsel for the appellant strenuously urged that the licenser is

bound to bring a suit either for injunction or for ejectment against the licensee before he can get rid of the right of the licensee to enjoy the licence. According to him, this would be the position even if the license had been validly revoked and the licensee's right under the agreement had ceased. I have not been referred to any authority in support of this somewhat extraordinary contention.

It militates against the very concept of a license. A licence is a right "to do or continue to do in or upon the immovable property of the grantor something, which would, in the absence of such a right be unlawful". If a license validly determines the right of a licensee to do or continue to do in or upon the immovable property of the licensor anything in enjoyment of that license would come to an end, the result of which will be to make further exercise of that right unlawful.

If an injunction in favour of such a licence is given, it would only be permitting him to do what is unlawful for him to do. The court would thus be throwing its protection round a wrongdoer and forcing the rightful owner of property to submit to the unlawful action of the wrong-doer. I do not think any court should by any order or decree passed by it bring about such a strange and intolerable situation. The law does not permit a licensee whose license has been validly revoked to exercise his licence any longer.

If he does so, he does something wrong. He will be only a trespasser after he has lost his right under the license, and the owner of the land is entitled to deal with him as a trespasser. There is neither principle nor authority to support the rather strange proposition that in spite of the valid termination of the right of the licensee, he can continue to exercise his right until the

licenser obtains a decree from the court prohibiting him from doing so.

After the termination of the license, the licenser is entitled to deal with the property as he likes and to treat an intruder as sheer trespasser. This right he gets as an owner in possession of his property. He need not secure a decree of court to obtain this right. He is entitled to resist in defence of his property the attempts of a trespasser to come upon his property.

He may exert the necessary and reasonable force to expel a trespasser. Whatever be the liability that the true owner may incur under the Criminal law or even under the Civil law for use of excessive force, the trespasser will not be entitled to maintain a civil action against him so as to continue the trespass."

Considering the decision of apex court in the case of Bishen Dass v. State of Punjab, AIR 1961 SC 1570, the Court further said:

"7. Mr.Kaul has on the other hand invited my attention to a Supreme Court judgment in Bishen Dass v. State of Punjab, AIR 1961 SC 1570 in support of his argument that even in case of a trespasser the owner is under a legal obligation not to eject him otherwise than in due course of law. I have gone through this judgment carefully and I do not find that this, judgment really supports the principle adumbrated by Mr.Kaul. On the other hand this judgment also supports the view which I have expressed heretofore. that an owner is not bound to submit to the illegal possession of a trespasser and refrain from ejecting him otherwise than in due course of law is amply borne out from the observations of the Supreme Court which read thus (at p.1574):

"The admitted position so far as the present proceeding is concerned, is that the land belonged to the State; with the permission of the State, Ramji Das, on behalf of the joint family firm of Fequir Chand Bhagwan Dass, built the Dharmasala,

temple and shops and managed the same during his lifetime. After his death the petitioners, other members of the joint family, continued the management. On this admitted position the petitioners cannot be held to be trespassers in respect of the dharmasala, temple and shops: nor can it be held that the dharamshala, temple and shops belonged to the State, irrespective of the question whether the trust created was of a public or private nature. A trustee even of a public trust can be removed only by procedure known to law. He cannot be removed by an executive fiat. It is by now well settled that the maxim, what is annexed to the soil goes with the soil, has not been accepted as an absolute rule of law of this country, see *Thakoor Chunder Paramanick v. Ramdhone Bhattacharjee* (1866) 6 Suth WR 228, *Beni Ram v. Kundan Lall* (1899) 26 Ind. App. 58 (PC) and *Narayan Das v. Jatindranath* 54 Ind App. 218 : (AIR 1927 PC 135). These decisions show that a person who bona fide puts up constructions on land belonging to other with their permission would not be a trespasser, nor would the buildings so constructed vest in the owner of the land by the application of the maxim *quicquid plantatur solo, solo cedit*. It is, therefore, impossible to hold that in respect of the dharmasala, temples and shops, the State has acquired any rights whatsoever merely by reason of their being on the land belonging to the State. If the State thought that the constructions should be removed or that the condition as to resumption of the land should be invoked, it was open to the State to take appropriate legal action for the purpose."

8. The facts of the case before the Supreme Court were entirely different from the facts of the present case. There the petitioners had constructed buildings on Government land with its permission. The petitioners had therefore acquired, if not any other right, a least a right of irrevocable license to occupy and use the property for a particular purpose. They were not

as such trespassers who could be dispossessed otherwise than in due course of law."

##. The learned Single Judge of the Karnataka High Court, in the case of K.V.Narayan v. S.Sharna Gowda & anr. (supra) held that a trespasser in possession is not entitled to temporary injunction against a true owner.

##. Grant of temporary injunction is discretionary relief. A party before it can ask the court to exercise discretion in its favour must show that it has some equities in its favour which would impel a court to exercise discretion in its favour. A party seeking discretionary relief from the court must possess some right which the other side is trying to invade or there must exist an obligation in its favour whether contractual or otherwise in respect of which the opposite party is trying to commit a breach. A trespasser has no equities in his favour. The owner of the property trespassed is not under a legal obligation and there is no question of any contractual obligation in this case as both the courts have concurrently held that second and third floors were not let out, under which circumstances to submit to the act of trespass committed by petitioner. An owner has therefore every right to enter upon his property and restrain the trespasser from perpetuating the illegal occupation in the property. It is not necessary for him to take recourse to the legal proceedings in order to vindicate his rights of ownership and possession in respect of his property which has been taken into possession by another without any right or title. The principle underlying the grant of temporary injunction is a discretionary relief being a relief in equities, the court cannot aid the person who himself is guilty of doing wrongful thing.

##. In the case of Prataprai N. Kothari v. John Braganza (supra), an observation has been made by the apex Court that even the owner of the property can get back possession of the suit property only by resorting to due process of law, but this observation made by the court is to be considered in the context of the facts of that case. There the possession of the plaintiff in the suit property was exclusive for several decades and he was claiming this possession from May 1964 under registered lease deed. The defendant in the suit and the appellant before the apex court in the written statement though denied the claim of the plaintiff-respondent but no specific plea that he had title to the property has been raised.

##. In the case of N.Umapathy v. B.V.Muniyappa (supra), there it was the case of the respondent therein that he is in lawful possession of the disputed property under a lease deed. In these facts, the apex court has said that the respondent cannot unlawfully be dispossessed from the lands nor his possession and enjoyment can be interdicted except in accordance with due process of law.

##. In the case in hand, the plaintiff-petitioner claimed possession on the second floor and third floor on the basis of tenancy right. Both the courts have not accepted this right and injunction has not been granted. In the facts of this case, the finding of fact recorded by both the courts as well as decisions given cannot be interfered with. It is a case where these findings cannot be said to be perverse nor the approach of the courts below can be said to be arbitrary. But a larger question does arise for consideration in this case and that is: whether a person who has no right to continue in possession of the disputed property being a trespasser or is not in legal possession thereof though has not been protected by grant of temporary injunction by the courts, still to continue in possession because voluntarily he will not give possession to the respondents and the respondents are not in a position to take the possession unless they use reasonable force. Both the parties, in such matters, may possibly make all efforts in the case of plaintiff to retain possession and in the case of respondents to take possession. For this, the possibility of hiring the services of the persons who are involved in nefarious activities by the petitioner cannot be ruled out to protect his possession as temporary injunction has not been granted in his favour. The respondent, who is lawful owner of the property in dispute is free to take the possession thereof. For this two options are open to him. First is to file a suit for possession, meaning thereby, virtually though the plaintiff failed to get temporary injunction but indirectly succeeded in his approach. Second is to hire muscle powers to dispossess the plaintiff from the suit premises. If these were to be permitted, there would be violent conflict between the plaintiff and respondent. It is a right which cannot be claimed by defendants-respondents regardless of the question whether or not the plaintiff himself has any right to remain in possession. The courts, in such matters, while declining to grant interim injunction in favour of plaintiff, i.e. restraining the defendants from forcefully dispossessing the plaintiff from the suit property, if leaves the parties free in the matter to score their objects, the possibility of adopting of unlawful and illegal means by

both of them for protecting possession in the case of plaintiff and for taking possession in the case of defendants cannot be overruled. This order may result possibly in manifold criminal cases as well as head-breaking. Though both the court held that illegal possession of a party cannot be protected but merely by saying so, it does not relieve of its duty to see that the persons involved in nefarious activities may not be used by party to the litigation to whom relief has not been granted. It is equally the duty of the court to see also that once it is found that the person concerned is in illegal possession of the suit property lawful owner gets the possession thereof. True, it is the stage only to decide the application for temporary injunction. The suit is pending and finally in the suit, the plaintiff may succeed. But that stage will come afterwards and before that both the parties will indulge in all these unlawful activities, adopt all sort of unlawful and illegal means to score their objects and purposes and it will create a scene and possibly people will say that these all are the creation of courts and not of theirs. Where a trespasser cannot be protected by grant of temporary injunction by the courts as what is held in this case, then it is the duty of the court to see that wrong, illegal and unlawful means are not being adopted by the parties to litigation to protect and take possession as the case may be of the suit property. In a suit where the plaintiff has come up before the court for protection of his possession of suit premises, what order can be passed in the facts and circumstances where it declines to protect his possession, is a larger issue which needs to be considered. In the case of owner of the property who comes for taking possession thereof, there may not be any difficulty because ultimately the court will pass the decree and in execution thereof, the possession can be given. In such case, there may not be any order of the mandatory injunction directing the defendant to hand over the possession of the suit property to the plaintiff pending the decision of the suit. But in a case where trespasser has come before the court for protection of his possession of the suit property, this difficulty may arise. The court is equally concerned to see that citizens maintain rule of law of the country and they act in accordance with law. Section 151 of the Civil Procedure Code, 1908, reads as under:

151. Saving of inherent powers of Court --

Nothing in this Code shall be deemed to limit or
otherwise affect the inherent power of the Court

to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

##. To avoid all these possible unlawful acts, use of muscle powers and hiring of services of persons involved in nefarious activities etc., the court itself has to find out the way and give out appropriate direction re.: possession of the property in dispute. This court has power to pass appropriate order in the interest of justice or to prevent abuse of the process of the Court. Here under both clauses of Section 151 of the Civil Procedure Code, 1908, the court can exercise discretionary powers and give appropriate directions. Both the courts have declined to grant interim relief in favour of plaintiff, meaning thereby, the defendants are free or licenced or have passport to forcefully dispossess the plaintiff from the suit premises. So it will tantamount to abuse of process of the court because the court has not given any directions for his dispossession. Secondly, if the parties are left free to score their disputes by possibly adopting the mode as stated earlier, then certainly it is not in the larger interest of both the parties and in the interest of justice. Further the plaintiff has been found to be in illegal possession and in case at this stage, appropriate order is not passed for restoration of possession of the suit property to the lawful owner, then a law abiding owner of the property has to file the suit and indirectly it will amount to abuse of the process of the court also. In the case where the court is declining to grant temporary injunction protecting the possession of the plaintiff as he was found to be a trespasser or in illegal possession thereof, it has all the powers u/s.151 of the C.P.C. to give directions to the plaintiff here in this case, to hand over vacant possession of the disputed premises, the second floor and third floor to the lawful owner.

##. This aspect of the case has not been considered by both the courts below and those have felt contended and satisfied by declining to grant temporary injunction in favour of plaintiff, meaning thereby, the parties have been left free to fight on street for taking and retention of the possession of the disputed property. This court will not be a silent spectator in such matters nor it will permit these persons to score their objects and purposes by adopting unlawful and illegal means and in furtherance of the maintenance of law and order situation, it is a matter in the larger interest not only of both the parties, but the public at large to pass

appropriate order re.: possession of the property during the pendency of the suit. The plaintiff-petitioner is directed to give vacant possession of second and third floor of the suit property to the defendants-respondents, within a period of one month from the date of receipt of Writ of this order. However, in case ultimately the plaintiff succeeds in the suit, the defendants-respondent have to hand over the vacant possession of these two floors without there being any material alteration or changes effected therein to the plaintiff. It is further ordered that the defendants-respondents shall deposit Rs.5,000/= per month in the trial court during the pendency of the suit so that if ultimately the plaintiff-petitioner succeeds in the suit, he may be compensated for this deprivation of possession of second and third floor of the suit property. In case the plaintiff-petitioner succeeds in the suit, this amount deposited has to be paid to him and where he fails in the suit, the defendants-respondents shall take the money. The civil revision application is dismissed. Rule discharged subject to the directions aforesaid. The parties are directed to bear their own costs of this litigation.

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(sunil)